



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Ms. Peggy Harris  
Chief, Standardized Permit Section,  
Hazardous Waste Management Program  
Department of Toxic Substances Control  
PO Box 806  
Sacramento, CA 95812-0806

Dear Ms. Harris:

We appreciated the opportunity to meet with you and other state representatives on August 7 to discuss federal and state roles in carrying out the Resource Conservation and Recovery Act (RCRA) program. I believe it was a useful discussion, and I trust it will lead to effective cooperation in the future as the RCRA program moves forward. I've laid out below what I believe are the main follow-up items from the discussion.

**1. Participation of states in Environmental Protection Agency (EPA) rulemakings and other major projects.** At the meeting, we agreed that the current level of state involvement in major Office of Solid Waste (OSW) projects, including Hazardous Waste Identification Rule (HWIR) media, HWIR waste, the definition of solid waste (including the standardized permit), Subpart S, and WIN/Informed, was reasonable. We also agreed that, for the time being, we should stay away from major efforts at "co-implementation" or "co-regulation," along the lines of the original HWIR or definition of solid waste projects; however, we didn't rule out the possibility of comparable efforts in the future. Instead, we concentrated on how we could work better with the current level of effort.

For the most part, our discussions focused on how state opinions should be factored into EPA's internal policy deliberations, and how EPA can understand state concerns more clearly and respond to them more effectively. We talked about possible approaches, including 50-state reviews of documents, EPA-state meetings at critical steps in the rulemaking process, state presence at key EPA decision meetings, and the use of EPA-state steering committees – all of which have been used to one extent or another in different projects. Regardless of the mechanisms used, we also agreed that states needed feedback on how their views were received, and that states should have an opportunity to raise concerns to appropriate levels within EPA when their key recommendations weren't adopted. Finally, we recognized the need to involve other key EPA offices – particularly Office of Enforcement and Compliance Assurance

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(OECA) – early in any processes we develop, to ensure that all points of view are understood from the beginning.

Based on this discussion, OSW agreed to develop a proposed process for integrating states more effectively into major rulemakings and similar projects. Below we've outlined a general process, followed by a brief review of how it would apply to the specific projects we talked about at the August 7 meeting.

- States need a clear mechanism for learning about major OSW projects, allowing them to decide how to participate and at what level. We generally agreed that the current mechanisms adequately met this need, although OSW agreed periodically to provide Association of State and Territorial Solid Waste Management Officials (ASTSWMO) with copies of its internal regulatory tracking charts (after editing to allow distribution outside EPA).
- Because of the wide variety of rulemakings and projects undertaken by OSW, we don't believe a single process should be mandated across the board. Instead, on each project, OSW division or branch management and state representatives should agree on specific mechanisms for ensuring that state views are heard and addressed.
- Under any process, states should have the opportunity early on to comment on the general direction of a rule or project (if they choose), as well as on details as it evolves. The process should also ensure that states know when there are significant redirections in the project.
- Office of Solid Waste and Emergency Response (OSWER) managers will expect project managers routinely to keep them informed of state views on major projects as they progress.
- OSW understands that states won't always agree with each other, and it welcomes a full range of comments from states. At the same time, states should identify points where they have a strong consensus, or issues that they consider to be critical to the success of a project or rulemaking. This could happen at a special meeting with EPA, in a letter, in comments at a decision meeting, or through a range of other mechanisms.
- For major projects with sufficient state interest, states should have the opportunity to participate (in person or by phone) in key OSWER decision meetings. We will also consider the possibility of state attendance (e.g., by telephone) at EPA workgroup closure meetings. (States did have an opportunity to provide comments at the HWIR-media workgroup closure meeting, but did not have an opportunity to hear the full discussion).
- In every case, the process must ensure prompt feedback to states on how their comments have been received, and whether they have been accepted or not. States may choose to raise their concerns to higher levels of management within OSWER, if they aren't satisfied.

- We will hold state-EPA management meetings every six months (see below). These meetings will provide an opportunity to discuss major issues that have arisen in specific projects, if needed. However, we expect that issues specific to a rulemaking or other project will generally be addressed within the context of that project.

On the specific projects under discussion:

- HWIR media: The final rule is now under Office of Management and Budget (OMB) review; we expect it to be published this fall. After publication, we will offer to meet with states -- and EPA regions -- on authorization and implementation issues, and will discuss whether an ongoing EPA-state effort would be useful in implementing the rule smoothly.
- Subpart S: OSW and Office of Site Remediation Enforcement (OSRE) met with the ASTSWMO task force on July 9. We're considering state comments, and will get back to you when we've chosen a direction. Regardless of the direction we take (e.g., regulation v. guidance), we will continue to work through the corrective action task force.
- HWIR waste: ASTSWMO has written OSW, providing us with the results of the state pilots on approaches to waste exits from subtitle C and documenting discussions we had in an April meeting. We've followed-up on the ASTSWMO comments in a recent meeting, and will hold additional meetings when necessary. States will continue to participate in monthly workgroup conference calls.
- Standardized permits: We understand the states' concerns on both the substance of the issue and the process. We will be working within EPA to resolve the issue, and will offer the states an opportunity (e.g., through a telephone call) to discuss any resolutions we arrive at.
- Definition of solid waste: We are reviewing our direction and activities in this area (e.g., data collection) as part of budget planning for the coming year, and suggest we meet (or have a conference call) to discuss our plans and your ideas.
- WIN/Informed: At this point, we think the current team structure and the Executive Steering Committee adequately provides for state coordination and involvement.

2. **Cross-cutting issues.** In our discussions, we recognized that many projects raised cross-cutting issues that might better be addressed in a separate forum, rather than as a piece of various projects. We agreed that both EPA and the states would each identify several cross-cutting issues, and that we would choose one or two issues from the list for discussion at the next ASTSWMO-OSWER/OECA management meeting (see item 3 below).

- **Alternative state authorities for corrective action.** Many states are conducting cleanup at RCRA Treatment, Storage and Disposals (TSDs) under non-authorized cleanup programs (e.g., state superfunds, state "voluntary" programs, etc.); also, many states have consolidated their state cleanup programs under one set of regulations or in one

program. EPA and the states need to work together to figure out how to credit non-RCRA state actions at TSDs and how to accommodate states who are using, or who seek to use, non-RCRA authorities at RCRA facilities.

- **Contingent management/conditional exclusions/waste exits.** OSW is now developing, or has recently issued, several rules that exit wastes from the regulation as hazardous (and in some cases solid) wastes. The HWIR waste rule is the most obvious, but the munitions rule, the recent petroleum listing (for certain recycled oil-bearing wastes), and the phase IV rule (for mineral processing wastes) allowed conditioned exits. In the context of the HWIR rule, states have favored approaches that completely exit a waste from subtitle C, without subsequent subtitle C controls; EPA, however, is concerned that this approach would limit wastes eligible for exit to the point where relatively little relief would be possible.
- **Use of delistings, variances, and other areas of flexibility by states.** Many states are now authorized for delisting, and EPA is encouraging states to seek authorization for land ban variances, partially reclaimed variances, and similar provisions. One of the most promising opportunities for program flexibility in the future lies in the careful use of this type of variance. At the same time, many external stakeholders (and EPA) are concerned about national consistency, and stakeholders often ask EPA to set clearer national standards. It might be worth talking through how far we should push state-by-state flexibility in the use of variances and similar processes, and where greater national consistency may be more appropriate.
- **State authorization.** The pace of state authorization continues to be slow, and the process remains frustrating for many regions and states. Particular high-profile issues (such as audit privilege and immunity laws) probably lie outside the scope of fruitful discussion, since they aren't specific to RCRA. However, it might be worth taking another try at addressing the points of frustrations in the system, and looking for ways to allow quicker authorization.

3. **Regularly scheduled meetings.** We agreed to hold regularly scheduled meetings of EPA and state leaders every six months. The meetings will allow us to review our current working relationships, and to look for opportunities to collaborate on future efforts. The meeting would also provide an opportunity to discuss cross-cutting issues, such as those described above.

In addition, we discussed the need to work together on shaping the RCRA program for the future. For most of the August meeting, we addressed current projects, but we ended with a brief discussion of areas RCRA might move in the future – e.g., industrial D wastes, special wastes, follow-up to OSWER's air characteristics study. These meetings will provide an opportunity to discuss future directions of the program.

4. **Regional involvement.** By design, the meeting focused almost entirely on EPA headquarters and state relations. At the same time, we recognized that -- particularly as discussions moved toward issues of program implementation -- the regions are major players and

need to be included in discussions. In particular, we believe that more direct communication on national issues would be useful between state leaders and regional waste managers. Toward this end, we're inviting a few state representatives to the EPA RCRA policy advisors meeting next November in San Diego. While the states have generally been excellent in soliciting EPA headquarters participation in ASTSWMO meetings, we've found regional RCRA management to be underrepresented. We'll be happy to work with ASTSWMO to promote greater EPA regional participation.

**Next steps:** We hope to get your reaction to the proposed process steps within a week or two, as well as the state list of possible cross-cutting issues. We suggest a conference call, perhaps, in mid-November, to confirm the process and identify one or two high priority items from the joint list of issues. At that time, we can also schedule the first follow-up meeting, presumably in early spring 1999. (In the meantime, of course, we can discuss the general approach or specific issues at the October ASTSWMO meeting here in Washington).

Again, we appreciated the opportunity to meet with you on August 7, and we look forward to working with you.

Sincerely yours,



Matthew Hale, Acting Deputy Director  
Office of Solid Waste

cc: Mike Shapiro, OSWER  
Elizabeth Costworth, OSW  
Tom Kennedy, ASTSWMO  
Lori Boughton, OSRE  
Dave Nielsen, ORE  
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